IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 867 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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RASHID OOMER & 4 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MS MEGHA JANI for Applicant(s) : 1 - 5.
MR DIPEN DESAI, APP for Respondent(s) : 1,
TANNA ASSOCIATES for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 04/10/2007

ORAL JUDGMENT

1. In the present petition, the petitioners have prayed for quashing of a criminal complaint being Criminal Case No.1269/1998 filed by respondent no.2 herein before learned Judicial Magistrate First Class, Veraval on 20.7.1998.

2. In the said complaint, it is stated that on 19.7.1998, when the complainant was sitting in his chamber at Hotel Park, all the accused persons i.e. the petitioners herein came to his chamber and after some discussion regarding the pending proceedings before the Bombay High Court, these persons got excited and started

using foul language. Upon hearing the shouting, driver and electrician of the complainant rushed to his chamber. Accused nos. 3,4 and 5 were instigating other accused and accused nos. 1 and 2 were threatening to assault the complainant upon which he left his chamber. At that time, the accused were giving threat to the complainant that they will send hired criminals to crush his bones. On the basis of these allegations, the complainant lodged a complaint for offences punishable under Sections 352, 504, 506 and 114 of the Indian Penal Code.

3. Though served, no one appears for respondent no.2 i.e. original complainant. I have heard learned advocate Ms. Jani for the petitioners and learned APP Shri Dipen Desai for respondent no.1-State.

4. From the material on record, it is established that the petitioners were the Directors of one Albaraka Finance House Ltd which company had loaned substantial amounts to respondent no.2. Civil Suits were pending before the Bombay High Court for recovery of such amount since the complainant had not repaid the same. There were other proceedings also initiated by the petitioners against respondent no.2 including the complaint for misstatement in the prospectus. Apparently, to use the present complaint as lever against the petitioners,

respondent no.2 filed the said complaint making general allegations of attempted assault. Learned advocate Ms. Jani for the petitioners drew my attention to the averments made in the petition and submitted that the petitioners had in the past held highly responsible positions. The petitioner no.3 was the Executive Director of RBI. All the petitioners are highly respectable members of the society and were of advanced age. The petitioners nos. 3 and 4 were aged about 70 and 74 years respectively on the date of incident. It is further stated in the petition that petitioner no.5 resides in Saudi Arabia and has never travelled to India. The other petitioners also on the date of incident were not present in Jamnagar when the alleged incident took place.

5. Though sufficient opportunity has been given to respondent no.2, no denial affidavit has been filed controverting the statement made by the petitioners on oath. I am conscious of the fact that ordinarily while the Court is considering the issue of quashing of complaint, factual controversies cannot be gone into. The present case is however, somewhat peculiar. Apparently, only by way of counter-blast, the complaint seems to have been filed. It is not in dispute that the petitioners had initiated civil as well as criminal proceedings against respondent no.2 for being unable to pay the debts of the Company

in which the petitioners were the Directors.

6. Considering all these aspects of the matter, I am fully convinced that filing of the complaint was only with a view to harass the petitioners and permitting such complaint to be investigated would only amount to abuse of process of Court.

7. Ordinarily, while considering the question of quashing the complaint,the Court would confine its inquiry to whether the allegations made in the complaint taken on the face value discloses any offence or not, in rare cases some flexibility is always available with the Court as was held by the Apex Court in the case of **State of Haryana and others v. Bhajanlal and others** reported in 1992 Supp(1) Supreme Court Cases 335. In this regard, laying down broad parameters in exercise of powers under Section 482 of the Criminal Procedure Code, the Apex Court laid down following principles for such exercise :

"1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F. I. R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate

within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the oncerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. Applying the principles laid down in the said decision to the facts of the present case, I have no hesitation in coming to the conclusion that on the very face of it entire complaint and

allegations made therein are so absurd that it is not possible ever to reach to the conclusion of guilt of the petitioner and further that proceeding is initiated with mala fide and malacious intention of abusing the process of Court.

9. In the result, by allowing this petition, complaint dated 20.7.1998 filed before learned Judicial Magistrate First Class, Veraval, is quashed. Rule made absolute.

(Akil Kureshi,J.)

(raghu)